2. *AT&T Premises Ruling*

The Commission also vindicated MCI's interconnection rights with regard to other discriminatory tariffing conditions filed by AT&T. On October 7, 1974, MCI filed a petition for investigation objecting to certain restrictions in AT&T's private line tariffs. These restrictions provided that AT&T would connect its private line services to other carriers' networks only at the premises of AT&T customers.[65/] AT&T argued that the tariff restrictions were appropriate in every respect.

In the *AT&T Premises Ruling*,[66/] the Commission held that the restrictions in AT&T's tariff limiting access to AT&T's private line services only to AT&T's customers violated the principles of *Hush-A-Phone* and *Carterphone*. The Commission indicated that "[i]t makes no difference conceptually that the principles [in *Carterphone*] were developed with respect to the connection of customer-supplied devices while here we are concerned essentially with the connection of AT&T private line service to services provided by other carriers."[67/] Moreover, the Commission found that the *Specialized Common Carrier* and *Bell System Tariff Offering* decisions "clearly have established that AT&T is duty bound to honor reasonable requests for the interconnection of AT&T facilities with specialized carrier facilities."[68/] The Commission concluded that requests for termination of AT&T's private line service at non-customer premises must be honored if AT&T would not suffer any technical or economic harm that adversely affected its ability to serve the public.[69/]

65/ *AT&T; Restrictions on Interconnection of Private Line Services*, Memorandum Opinion and Order, 60 F.C.C.2d 939, at note 2 ("*AT&T Premises Ruling*").

66/ *See id.*

67/ *See id.*, 60 F.C.C.2d at 942-3.

68/ *See id.*

69/ *See id.*, 60 F.C.C.2d at 944; *see also AT&T Co.'s Proposed Tariff Revisions in Tariff F.C.C. No. 263 Exempting Mebane Home Telephone Co. of North Carolina From the Obligation To Afford Customers the Option of Interconnecting Customer-Provided Equipment to Mebane's Facilities; AT&T Transmittal No. 12321*, Memorandum Opinion and Order, Docket No. 20476, 53 F.C.C.2d 473, 476-478 (1975) (the Commission held that an AT&T tariff modification exempting Mebane, a rural telephone company, from providing interconnection to PBXs and key telephone systems was unreasonable where interconnection would produce substantial private benefits without causing any technical harm to Mebane's telephone system); *AT&T Co.; Interconnections with Private Interstate Communications Systems*, Memorandum Opinion and Order, 71 F.C.C.2d 1 (1979) (the Commission held that AT&T's refusal to interconnect the CPE terminals of Aeronautical Radio, Inc. ("ARINC"), an operator of a nationwide private line communications system, to its network was unreasonable where AT&T failed to show that the interconnection of ARINC's equipment

3. *Customer Interconnection*

The Commission was not content to resolve interconnection disputes solely on a case-by-case basis. In 1974, the Commission in *Customer Interconnection* instituted a broad fact-finding investigation into the economic effects and interactions of several telecommunications industry and regulatory policies and practices.[70] The *Customer Interconnection* investigation focused on two key issues: (i) whether the existence of competition in the market for private line services and terminal equipment either had caused or was likely to cause significant loss of revenues by AT&T and the Bell System; and (ii) whether the beneficial cross-subsidies claimed by AT&T did in fact exist and, if so, whether they would be adversely affected by the presence of competition in the private line and terminal equipment markets.[71]

AT&T claimed under its "contribution loss" theory that its competitive private line and terminal equipment services contributed revenues above their costs that could be "cross-subsidized" to help maintain low rates for basic telephone service.[72] AT&T also argued that there were "economies of scale" and other factors in the supply of U.S. telecommunications services that caused the entire market sector to be a natural monopoly, and any duplication by competitors of terminal equipment or services would therefore be wasteful. The *Customer Interconnection* proceeding found that "precisely the opposite may be true, *i.e.*, that terminal equipment and private line services may be earning less than their full costs, and thereby imposing a burden on basic telephone rates."[73] After reviewing the equipment interconnection and private line cases, the Commission concluded that there was no basis for

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would cause any technical harm to the telephone network or any economic harm that would adversely affect the ability of AT&T adequately to serve the public).

70/ *See Economic Implications and Interrelationships Arising From Policies and Practices relating to Customer Interconnection, Jurisdictional Separations and Rate Structures*, Notice of Inquiry, Docket No. 20003, 46 F.C.C.2d 214, (1974), Supplemental Notice, 50 F.C.C.2d 574 (1974), First Report, 61 F.C.C.2d 766 (1976) ("*Customer Interconnection*"), Second Report and Order, 75 F.C.C.2d 506 (1980) ("*Customer Interconnection II*").

71/ *See Customer Interconnection*, 61 F.C.C.2d at 768.

72/ *See id.*, 61 F.C.C.2d at 769-770.

73/ *See id.* 61 F.C.C.2d at 776. Similarly, although LECs currently claim that local competition will result in cream-skimming and loss of revenue contribution to subsidize basic residential service, in fact, there is ample evidence that, in many states, residential services recover their costs, or a large portion thereof, and a subsidy for residential ratepayers does not exist. *See* discussion at notes 128-131 *infra*.

AT&T's claims that private line and equipment competition either had or would have any significant adverse impact on AT&T's revenues or on the rates for basic telephone service.[74]

D. Forbearance for Non-Dominant Carriers

In 1979, the Commission initiated the *Competitive Carrier* docket to conduct a thorough examination of its regulations applicable to AT&T as the still-reigning monopoly service provider and its rivals.[75] Recognizing that the "regulatory process itself may have both direct and indirect anticompetitive results," the Commission set out to determine whether the benefits of regulating certain classes of carriers who lacked market power, such as specialized common carriers, were outweighed by the costs that regulation imposed on such carriers.[76]

74/ The Commission employed *Customer Interconnection*'s broad findings of fact to support further development of pro-competitive policies in the long distance market. In *Customer Interconnection II*, the Commission found that its "policy of encouraging competition in the interconnect equipment market has been an effective supplement to traditional forms of regulation." 75 F.C.C.2d at 545. Furthermore, when the Commission subsequently initiated the *Competitive Carrier* proceeding to determine whether to establish a two-tier regulatory framework that would closely regulate AT&T as a dominant carrier and provide regulatory relief to non-dominant competitors by means of forbearance, it incorporated by reference the record from the *Customer Interconnection* docket. *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, Notice of Proposed Rulemaking, Docket No 79-252, 77 F.C.C.2d 308, 310 (1979) ("*Competitive Carrier Notice*"). The Commission also referenced evidence from the *Customer Interconnection* docket showing that the public benefit of competitive interconnection provided a basis for forborne treatment of non-dominant carriers, and that AT&T's market power in long distance justified applying the fully panoply of common carrier regulation and dominant status to AT&T's long distance services. *See Competitive Carrier Notice*, 77 F.C.C.2d at 325, 352.

75/ *See Competitive Carrier Notice*, 77 F.C.C.2d 308.

76/ *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, 85 F.C.C.2d 1, 2-3 (1980) ("*Competitive Carrier I*"). The FCC then forbore from Title II regulation of resellers. *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, 91 F.C.C.2d 59 (1982) ("*Competitive Carrier II*"). The FCC applied a market power analysis to forbear from applying tariff regulations to specialized common carriers (*i.e.* MCI), who were free to file tariffs if they so wished ("permissive detariffing"). *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor*, CC Docket No. 79-252, 95 F.C.C.2d 554 (1983) ("*Competitive Carrier IV*"). The Commission later extended the permissive detariffing policy to domestic satellite licensees. *See Policy and Rules Concerning*

In 1980, the Commission established a distinction between dominant and non-dominant carriers. Because AT&T and the independent telephone companies were found to have market power, the Commission imposed dominant status upon them.[77] The Commission also concluded that "a continuing assessment of the costs and benefits of imposing the dominant-carrier regulatory requirements clearly is warranted."[78] One key factor leading to the Commission's identification of AT&T as a dominant carrier was that it exercised bottleneck control over essential facilities.[79] The Commission explained that "a firm controlling bottleneck facilities has the ability to impede access of its competitors to those facilities."[80]

The Commission also concluded, however, that specialized common carriers were non-dominant and were so outflanked by AT&T monopoly facilities that "AT&T's rates constitute an umbrella price [and in comparison] the rates charged by [specialized common carriers] are clearly constrained."[81] All carriers not possessing market power thus were classified as non-dominant and placed under a streamlined regulatory regime. The

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Rates for Competitive Common Carrier Services and Facilities Authorization Therefor, CC Docket No. 79-252, 98 F.C.C.2d 1191 (1984) ("*Competitive Carrier V*"). In 1985, the Commission adopted a policy of mandatory detariffing and directed cancellation of the tariffs filed by all non-dominant carriers. *See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, Sixth Report and Order, CC Docket No. 79-252, 99 F.C.C.2d 1020 (1985) ("*Competitive Carrier VI*"), *rev'd and remanded sub nom., MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186, 1192 (D.C. Cir. 1985) (reversing mandatory detariffing on the grounds that, while Section 203 may authorize the Commission to modify its tariffing filing requirements by means of permissive detariffing, it does not allow a "wholesale abandonment" by the Commission of tariffing requirements through "mandatory detariffing"); *see also Tariff Filing Requirements for Interstate Common Carriers*, 7 FCC Rcd 8072 (1992), *rev'd AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *aff'd MCI Telecommunications Corp. v. AT&T*, 114 S.Ct. 2223 (1994). The Commission recently declared AT&T to be nondominant. *See Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, Order, FCC 95-427 (released October 23, 1995).

77/ *See Competitive Carrier I*, 85 F.C.C.2d at 20-22.

78/ *See id.*, 85 F.C.C.2d at 11.

79/ *See* 85 F.C.C.2d at 21.

80/ *See id.*

81/ *See* 85 F.C.C.2d at 28-9.

streamlined tariffing procedures established a presumption of lawfulness for non-dominant carrier rates and shorter, 14-day notice periods.[82]

The economic underpinning of the Commission's decision to establish a presumption of lawfulness for non-dominant carrier rates was a belief that firms lacking market power could not rationally price their services in ways that would contravene the reasonableness and nondiscrimination provisions of the Act.[83] Development of full cost support information would therefore be unnecessary and counterproductive for non-dominant carriers, and long notice periods would frustrate the flexibility of non-dominant carriers to adjust their rates and practices to respond without delay to changing demands in a competitive market.[84]

Complementing the decision to extend streamlined regulation to non-dominant carriers was the Commission's finding that AT&T and the Bell System (and independent telephone companies) exercised market power sufficient to "continue to apply the full panoply of [the Commission's] traditional regulations to AT&T[]."[85] The Commission explained that the control of bottleneck facilities "confers market power upon a firm" and gives it "the ability to impede access of its competitors to those facilities."[86] Finding that AT&T controlled the overwhelming share of MTS, WATS and private line markets and that "the Bell System control[led] access to over 80% of the nation's telephones",[87] the Commission concluded that AT&T and the Bell System control of bottleneck facilities required "detailed regulatory scrutiny." [88]

82/ *See* 85 F.C.C.2d at 30-40.

83/ *See* 85 F.C.C.2d at 31.

84/ *See* 85 F.C.C.2d at 33-37.

85/ *See* 85 F.C.C.2d at 23.

86/ *See Competitive Carrier I*, 85 F.C.C.2d at 21 n.52 (citing *United States v. Terminal Railroad Ass'n of St. Louis*, 224 U.S. 383 (1912); *Eastman Kodak v. Southern Photo Materials Co.*, 273 U.S. 359 (1927); *Associated Press v. United States*, 326 U.S. 1 (1945); *United States v. Klearflax Linen Looms, Inc.*, 63 F.Supp. 32 (D. Minn. 1945); *United States v. Lorain Journal Co.*, 342 U.S. 143 (1951); *Gamco v. Providence Fruit and Produce Building*, 194 F.2d 484 (1st Cir.), *cert. denied*, 344 U.S. 817 (1952); *Times Picayune Co. v. United States*, 345 U.S. 594 (1953); *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973); *Mt Hood Stages v. Greyhound Corp.*, 555 F.2d 687 (9th Cir. 1977), *vacated on other grounds*, 437 U.S. 322 (1978)).

87/ *See id.*, 85 F.C.C.2d at 23.

88/ *See id.*, 85 F.C.C.2d at 21.

In 1982, the Commission expanded the deregulatory policies of *Competitive Carrier I* by adopting a policy of "permissive detariffing" in which it forbore from applying Title II regulation to resellers.[89] Under "permissive detariffing" a reseller would not be obligated to file tariffs, but it could file tariffs if it wished. In 1983, the Commission took another step in deregulating competitive common carriers by extending its policy of permissive detariffing to specialized common carriers, among others.[90] After implementing an expanded market power analysis, the Commission found the existence of demand substitutability between private line services and MTS and WATS services.[91] The Commission found that, after three years' experience with streamlined regulation of specialized common carriers, there was no likelihood either of regulatory problems from applying permissive detariffing to specialized common carriers or of lessening competition in private line services.[92]

II. THE PRO-COMPETITIVE LEGISLATIVE REFORMS AND THE COMMISSION'S ROLE IN THE DEVELOPMENT OF LONG DISTANCE COMPETITION ESTABLISH A PARADIGM FOR LOCAL COMPETITION.

Having reviewed the Commission's actions to promote competition in long distance markets, it would be a terrible waste of historical precedent not to apply these lessons to the competitive issues raised by monopoly power in the local exchange market today. Just as the Commission took a courageous, forward-looking and proactive stance in suppressing AT&T's monopolistic practices in long distance competition, the Commission now is positioned to police abuses of market power by incumbent LECs in the local exchange market.

The regulatory principles established in the struggle to unravel AT&T's long distance monopoly — *e.g.*, promoting facilities-based competition through alternative technologies and networks and encouraging the development of nondiscriminatory access and fair and reasonable interconnection to essential facilities — will continue to serve an important purpose in reining in unfettered abuse by incumbent LECs with market power. In addition, legislative reform has given and will continue to provide the Commission an even stronger mandate to propel facilities-based competition from, and new entry by, competitive local exchange carriers.

The three essential ingredients of local competition are: (i) eliminating laws and regulations that prevent entry by new competitors; (ii) establishing fair terms and conditions for carrier-to-carrier interconnection; and (iii) implementing fully functional telephone number portability. The following section outlines current Commission opportunities to

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89/ *See Competitive Carrier II*, 91 F.C.C.2d 59.

90/ *See Competitive Carrier IV*, 95 F.C.C.2d 554.

91/ *See Competitive Carrier IV*, 95 F.C.C.2d at 564.

92/ *See id.*, 95 F.C C.2d at 578-9.

introduce these three elements in the local exchange market both by drawing on its history in the long distance markets and by anticipating the regulatory reforms contemplated in pending telecommunications legislation.

A. Elimination of Regulatory Barriers to Entry

Local competition will require the elimination of state and federal regulation that perpetuates incumbent LEC monopolies or inhibits competitive new entry. As the Commission recognized in *Competitive Carrier*, "the regulatory process itself may have both direct and indirect anticompetitive results."[93] State and federal regulation has directly inhibited competition by excluding new entrants into the local exchange market or by creating economic conditions that make new entry infeasible. Fortunately, many states are removing entry barriers, and expected federal legislation would preempt such barriers altogether. Moreover, Commission forbearance initiatives in *Competitive Carrier* and other contexts provide useful guides on how to accelerate the entry of new competitors into the monopoly local exchange market.

1. Removing State Barriers To Entry

Local exchange competition requires the elimination of state laws or regulations that directly or indirectly prevent entry by new carriers. Many states already have repealed statutory prohibitions on new entry and initiated programs to eliminate regulatory barriers. At the same time, the pending federal legislation would authorize the Commission to preempt state entry barriers directly

In 1995 alone, 14 states passed legislation to abolish incumbent LEC monopolies over the local exchange market by promoting entry by new competitors.[94] Many other states acted in the preceding years. These legislative initiatives permit state commissions to streamline existing rate regulation requirements or to eliminate rate regulation altogether with respect to new entrants in the local exchange market.

Several states in the forefront of regulatory reform have taken major steps to advance local competition. The California Public Utilities Commission ("California PUC"), for example, adopted interim local exchange competition rules in July 1995.[95] The California

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93/ *See Competitive Carrier I*, 85 F.C.C.2d at 2-3.

94/ *See* Colorado (HB-1335), Florida (SB-1554), Georgia (SB-137), Hawaii (Act 225; H.B. 471), Iowa (HB-518), Michigan (Pub. Act 216), Minnesota (SB-752), New Hampshire (SB-106), North Carolina (HB-161), Tennessee (SB-891; HB-695), Texas (HB-2128), Utah (HB-364), Virginia (HB-1956) and Wyoming (HB-176).

95/ *See Order Instituting Rulemaking and Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, Decision 95-07-054, R.95-04-043, I.95-

PUC invited new entrants, known as "competitive local carriers," to submit certification applications by September 1, 1995. On December 20, 1995, the California PUC granted certificates to 31 companies, with more likely to follow.[96] While many issues remain for the California PUC to resolve, there appears to be a significant commitment by California regulators to competition in place of regulation. New York is another state in an advanced stage of local competition implementation. In an effort to establish "a level playing field for local competition," the New York Public Service Commission ("New York PSC") released several orders last year requiring interim number portability, flat-rate interconnection pricing, and intercarrier compensation.[97]

Several states, including Arizona, California, Connecticut, Oregon, Texas and Washington, also have directed LECs to provide bill-and-keep on an interim basis in interconnection arrangements with competitive local carriers.[98] These states have

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04-044 (California PUC, released July 24, 1995) ("*California PUC Local Competition Order*"); *See also California PUC Adopts Local Exchange Competition Rules, Designates Issues for Further Hearings*, Telecommunications Reports, at 9 (July 31, 1995).

96/ *See Order Instituting Rulemaking and Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, Decision 95-12-057, R.95-04-043, I.95-04-044 (California PUC, released December 20, 1995); *see also California PUC Adopts Final Telecom Competition Rules, Gives Okay to 31 Entrants*, Communications Daily, at 2 (December 21, 1995)).

97/ *See Proceeding to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Order Instituting Framework for Directory Listings, Carrier Interconnection, and Intercarrier Compensation, Case No. 94-C-0095 (New York PSC, released June 28, 1995). Also last year the Connecticut Department of Public Utility Control ("Connecticut DPUC") launched investigations into the costing and depreciation practices of the state's incumbent telephone companies as part of the state's local competition and unbundling initiatives. *See DPUC Investigation into The Southern New England Telephone Company's Cost of Providing Service*, Docket No. 94-10-01 (Connecticut DPUC, released June 15, 1995); *DPUC Investigation into the New York Telephone Company's Cost of Providing Service*, Docket No. 94-11-02; *DPUC Investigation into the Southern New England Telephone Company's Intrastate Depreciation Rates*, Docket No. 94-10-03 (Connecticut DPUC, draft decision released September 26, 1995).

98/ *See Rules for Telecommunications Interconnection and Unbundling*, Docket No. R-0000-96-001, Decision No. 59438 (Arizona Corporation Comm'n, January 11, 1996) ("*Arizona Interconnection Order*"); *California PUC Local Competition Order*, at 38-9; *DPUC Investigation into the Unbundling of the Southern New England Tel. Co's Local Telecommunications Network*, Docket No. 94-10-02 (Conn. Dep't of Pub. Util. Control, September 22, 1995) ("*Connecticut DPUC Bill-and-Keep Order*"); *Applications of Electric* acknowledged that a zero-based charge for termination of traffic between incumbent LEC and competitor networks will promote local exchange competition and will accurately structure such an interconnection arrangement as a mutual exchange of traffic between competitors, rather than as an ordinary service provided by a carrier to customers.

To hasten these state initiatives, pending federal legislation would extend broadened preemption authority to the Commission to enable expansion and continuation of federal policies to pave the way for local competition. The jurisdictional provisions of the Communications of 1934 give the Commission exclusive jurisdiction over all interstate telecommunications,[99/] but "fence[] off"[100/] from Commission jurisdiction all "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier . . . ."[101/] Under the Supreme Court's interpretation of this statutory scheme in the *Louisiana PSC* decision, the Commission is denied jurisdiction over all aspects of intrastate telecommunications that are severable from the interstate portion or do not conflict with a Federal policy.[102/] The pending federal legislation, in contrast, would amend the Communications Act to empower the Commission to preempt all state and local laws, regulations or legal requirements that bar anyone from providing telecommunications services.[103/] These provisions are designed to remove barriers to entry in local markets to assist competitive entry by new service providers.

Lightwave, Inc., et al for Certificates of Authority to Provide Telecommunications Services in Oregon and Classification as Competitive Telecommunications Providers, CP 1, CP 14, CP 15, Order (Oregon Pub. Util. Comm'n, January 12, 1996) ("*Oregon PUC Order*"); Texas (HB-2128); *Washington Util. & Transportation Comm'n v. U S West Communications, Inc., et al.*, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, In Part, Docket Nos. UT-941464, UT-941465, UT-950146, and UT-950265 (Washington Util. & Transp. Comm'n, adopted October 31, 1995) ("*Washington UTC Order*"), *pet. for review pending sub nom., U S West Communications, Inc. v. Washington Util. & Transportation Comm'n*, Wash. Sup.Ct. King County (filed November 13, 1995).

99/ *See* 47 U.S.C. § 152(a).

100/ *See Louisiana Public Serv. Comm'n v. FCC,* 476 U.S. 355, 370 (1986) ("*Louisiana PSC*"); *see also California v. FCC,* 798 F.2d 1515 (D.C. Cir. 1986); *Nat'l Ass'n of Reg. Util. Comm'rs v. FCC,* 880 F.2d 422 (D.C. Cir. 1989).

101/ *See* 47 U.S.C. § 152(b).

102/ *See Louisiana PSC*, 476 U.S. at 372-376.

103/ *See* Proposed 47 U.S.C. § 253, Telecommunications Act of 1995, § 101.

The combined supports of state and federal legislative efforts provide the Commission with a solid platform to dismantle regulatory barriers to local exchange competition.[104] State barriers to competitive interconnection, for example, must be eliminated. In addressing regulatory reform, therefore, the Commission should expand on the role it played in the growth of long distance competition when it preempted state regulation that directly or indirectly hindered the interconnection of competitors' telecommunications equipment and established a federally protected right to interconnection.[105] Similarly, a uniform federal interconnection policy promoting just, reasonable and nondiscriminatory access by competitors to incumbent LEC's essential network facilities will promote the public interest.

2. Forbearance From FCC Regulation

Regulatory forbearance is an important regulatory tool to reduce barriers to competitive entry. By not applying regulations that are unduly burdensome to new entrants or are otherwise unnecessary to promote the public interest, the Commission can stimulate competition in the local exchange market. Authority to forbear from Title II regulation, as authorized by pending legislation, would enable the Commission to adapt its regulatory policies to promote new entry into the local loop.

Specifically, pending federal legislation would authorize the Commission to forbear from applying any provisions of Title II to a LEC if it determines that: (i) enforcement of a particular provision is not necessary to ensure just, reasonable and nondiscriminatory rates, terms and conditions; (ii) enforcement of the provision is not necessary to protect consumers; and (iii) forbearance from applying the provision is in the public interest.[106] In making its public interest determination, the Commission would be required to consider whether forbearance from enforcing the regulation or provision would promote competitive market conditions, including the extent to which forbearance would enhance competition among providers of telecommunications services.[107]

104/ For example, in 1993, Congress amended Sections 2(b) and 332 of the Communications Act to promote competition by vesting the Commission with sole jurisdiction over all aspects of CMRS service including rates, terms and conditions of interconnection between LECs and CMRS providers. *See* 47 U.S.C. §§ 152(b), 332(c); *see also* Cox Enterprises, Inc., *Ex Parte* Presentations, filed in CC Docket No. 94-54 on October 16, 1995 and GN Docket No. 93-252 on November 2, 1995.

105/ *See Telerent Leasing Corp.*, Memorandum Opinion and Order, Docket No. 19808, 45 F.C.C.2d 204, 220 (1974) ("*Telerent*"), *aff'd sub nom.*, *North Carolina Util. Comm'rs*, 537 F.2d 787 (4th Cir. 1976), *cert. denied*, 429 U.S. 1027 (1976).

106/ *See* Proposed 47 U.S.C. § 160, Telecommunications Act of 1995, § 401.

107/ The Telecommunications Act of 1995 also provides that any telecommunications carrier may petition the Commission for forborne treatment. *See id.*

As the Commission's history in long distance regulation has borne out, different regulatory treatment of service providers with different degrees of market power is justified when it promotes competition. Forbearing from applying the full panoply of Title II common carriage regulations to non-dominant competitors has several benefits. First, reducing or eliminating regulatory burdens for emerging competitors lowers their cost of doing business and enables them to respond more quickly to marketplace forces. Creating a distinction between regulated, dominant carriers and forborne, non-dominant carriers also permits the Commission to focus its attention on areas where regulation is necessary to protect consumers and the growth of competition. Just as AT&T's monopoly long distance rates were a backstop that prevented non-dominant service providers from charging unreasonable rates, incumbent LECs' rates constitute an umbrella price that imposes a restraint on the rates charged by non-dominant competitors.[108/] Forbearing from applying Title II regulations such as cost support and tariffing requirements to non-dominant carriers is, therefore, justified where non-dominant competitors lack market power and cannot rationally price their services in ways that would contravene the reasonableness and nondiscrimination provisions of the Act.[109/] The Commission's regulations thus can be designed to give relief to current dominant carriers as competition grows and the potential for anticompetitive behavior is curbed.

The eventual reversal of the Commission's mandatory detariffing policy in the long distance area by the Supreme Court does not alter the pro-competitive consequences of a forbearance policy.[110/] Indeed, the Supreme Court in *MCI v. AT&T* expressed sympathy for the Commission's claim that "[tariff] filing costs raise artificial barriers to entry."[111/] Acknowledging that increasing competition by means of detariffing may be a "desirable policy," the Supreme Court nonetheless concluded that authority for the Commission's mandatory detariffing policy did not exist in the Communications Act of 1934 and only Congress could provide such authority.[112/]

Notably, as acknowledged by the Supreme Court in *MCI v. AT&T*, Congress has extended forbearance authority to the Commission in the wireless telecommunications area. In 1993, Congress amended Section 332(c) to authorize the Commission to forbear from

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108/ *See Competitive Carrier I*, 85 F.C.C.2d at 28-9

109/ *See Competitive Carrier I*, 85 F.C.C.2d at 31, 33-37.

110/ *See MCI Telecommunications Corp. v. AT&T*, 114 S.Ct. 2223 (1994) ("*MCI v. AT&T*").

111/ *See id.* 114 S.Ct. at 2233.

112/ *See id.*

applying most Title II regulations to wireless telecommunications providers.[113] In the *CMRS Second Report and Order*, the Commission exercised this statutory authority and decided to forbear from applying the most burdensome Title II regulations, including tariffing and Section 214 certification requirements, to CMRS providers.[114] The forbearance provisions in pending reform legislation are nearly identical to those in Section 332(c), except that they apply more broadly to all other common carriers.

In short, the Commission's experience with forbearance in *Competitive Carrier* now has been formally embraced by Congress as an effective means of spurring competition. With the expanded authority contemplated by the pending legislation, the Commission will be required to promote facilities-based competition in local exchange monopoly markets by easing regulatory burdens on new entrants where they are not needed to protect the public interest and by maintaining regulation of dominant LECs until the Commission finds that market conditions justify streamlining regulation. In implementing forbearance, the Commission's experience in *Competitive Carrier* is a positive model for fashioning Title II relief for new entrants and non-dominant competitors in the local exchange market.

B. Nondiscriminatory Access and Interconnection to Essential Local Exchange Facilities

Because incumbent LECs are in exclusive control of their networks, and LEC competitors must have access and interconnection to these networks, the Commission must ensure that incumbent LECs do not exploit their dominant position over essential local exchange facilities to exclude or to control the growth of competition from new entrants. The pending federal legislation includes provisions that would impose strict obligations upon incumbent LECs to make interconnection and access to unbundled network elements available at just and reasonable rates and on nondiscriminatory terms and conditions. To implement these reforms and expedite the advent of competition in the local exchange market, the Commission must draw on its *Carterfone* line of cases, which imposed interconnection and access obligations on AT&T to open up its long distance monopoly network to competition. Non-discriminatory interconnection to essential monopoly facilities, as demonstrated in the FCC's decisions introducing terminal equipment and private line competition, can form the foundation of thriving competition.

113/ *See* 47 U.S.C. § 332(c)(1)(A).

114/ *See CMRS Second Report and Order*, 9 FCC Rcd 1411, 1478-1481 n.357 (1994) (citing *Competitive Carrier Notice*, 77 F.C.C.2d at 334-338; *Competitive Carrier I*, 85 F.C.C.2d at 31). The Commission has also subsequently tentatively proposed to provide further forbearance relief for small businesses and "small" CMRS providers. *See Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service*, Notice of Proposed Rulemaking, GN Docket No. 94-33, 9 FCC Rcd 2164 (1994).

1. Interconnection of Competing Local Networks

One of the most important elements in establishing nondiscriminatory interconnection in the local exchange market is the development and implementation of mutual compensation arrangements that do not act as a barrier to the introduction of facilities-based competition.[115] Interconnection arrangements between new entrants and incumbent LECs must reflect the benefit each network provides the other, namely, terminating the traffic presented to it from the other carrier's network. Accordingly, the terms and conditions for termination of one another's traffic must recognize this reciprocal termination function.

As regulators increasingly are recognizing, adoption of a "bill-and-keep" model of mutual compensation for interconnection, at least on an interim basis, will ensure the greatest efficiency and competitive gains. Under a bill-and-keep model of interconnect pricing, new entrants and competitors would not charge each other for terminating one another's traffic.[116]

115/ *See* Dr. Gerald W. Brock, *Incremental Cost of Local Usage*, filed on behalf of Cox Enterprises, Inc., in CC Docket No. 94-54 (March 16, 1995) ("Brock Incremental Cost Paper").

116/ A bill-and-keep model is economically efficient if: (i) traffic flow is roughly balanced in either direction; or (ii) actual costs of terminating traffic are low in relation to the transaction costs of measuring and charging for terminating traffic. *See* Brock Incremental Cost Paper, at 2; *see also* Dr. Gerald W. Brock, *Interconnection and Mutual Compensation With Partial Competition*, attached to Comments of Comcast Corporation, Appendix, *in* CC Docket No. 94-54, at 24 (filed September 12, 1994) ("Brock Interconnection Paper"). Balanced traffic flows produce terminating charges that are equal and therefore cancel each other out. *See* Brock Incremental Cost Paper, at 4-5. A zero charge for call termination would produce the same result as balanced traffic flows. Even if traffic flow is not balanced, bill-and-keep interconnection charges still make economic sense if the actual costs of terminating traffic are low in relation to the costs of measuring and charging for terminating traffic. In this regard, studies show that the average incremental cost of terminating traffic at LEC end offices is $.002 per minute or 0.2 cents per minute. The most comprehensive public engineering study of incremental cost of interconnection was done by the Incremental Cost Task Force with members from GTE, Pacific Bell, the California Public Utilities Commission, and the RAND Corporation. *See* Bridger Mitchell, INCREMENTAL COSTS OF TELEPHONE ACCESS AND LOCAL USE (Santa Monica, Calif: The Rand Corporation, 1990); *reprinted in* William Pollard, ed., MARGINAL COST TECHNIQUES FOR TELEPHONE SERVICES: SYMPOSIUM PROCEEDINGS, NRRI 91-6, (Columbus, Ohio: National Regulatory Research Institute, 1991); *summarized in* Brock Incremental Cost Paper, at 3-6. A zero charge for call termination is therefore economically efficient because the actual cost of terminating traffic — $.002 per minute — is low in relation to the administrative and transactional costs associated with measuring and charging for the actual cost of terminating traffic.

The Commission should be applauded for tentatively proposing a bill-and-keep model of mutual compensation with regard to LEC-to-CMRS interconnection in a recently released Notice.[117] As the Commission recognized, bill-and-keep "has the benefits of administrative simplicity, preventing LECs from deterring interconnection through excessive charges, and approximating incremental capacity costs . . . ."[118]

Pending federal legislation would require that interconnection arrangements between LECs and other telecommunications service providers ensure mutual, reciprocal compensation for costs associated with the origination and termination of one another's traffic.[119] The pending federal legislation requires that the terms and conditions of call origination and termination be based on incremental cost, and also explicitly permits bill-and-keep arrangements.[120] Congress thus recognizes that interconnection arrangements between incumbent LECs and CMRS providers for origination and termination of one another's traffic should not be viewed as ordinary sales of services to customers, but rather, as mutual exchanges of traffic among co-carriers. Congress also considers the bill-and-keep approach to promote reciprocal compensation among competing telecommunications service providers. Significantly, a number of state regulatory authorities have already adopted or are in the process of adopting bill-and-keep to help jumpstart competition in the local exchange.[121]

2. LEC Arguments Against Competitive Interconnection Are Reminiscent of AT&T's Arguments to Protect Its Monopoly.

Adopting a bill-and-keep model of interconnection for terminating traffic on competitive LEC networks would go a long way toward breaking down the local exchange bottleneck. It is highly likely, however, that incumbent LECs will vigorously challenge the efficacy and fairness of bill-and-keep. In doing so, the LECs will undoubtedly use many of

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117/ *See Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, CC Docket No. 95-185 (released January 11, 1996).

118/ *See Commission Seeks Comment on Interconnection Arrangements Between Wireless and Local Exchange Carriers (CC Docket No. 95-185)*, News Release, at 2 (December 15, 1995).

119/ *See* Proposed 47 U.S.C. § 251(b)(5), Telecommunications Act of 1995, § 101.

120/ *See* Proposed 47 U.S.C. § 252(d)(2)(A)-(B), Telecommunications Act of 1995, § 101.

121/ *See Arizona Interconnection Order*; *California PUC Local Competition Order*; *Connecticut DPUC Bill-and-Keep Order*; *Oregon PUC Order*; Texas (HB-2128); *Washington UTC Order*, *supra* at note 98.

the same arguments put forth by AT&T when opposing Commission efforts to impose reasonable interconnection requirements. The Commission's experience in addressing these arguments in the equipment and long distance arenas will stand it in good stead when evaluating the inevitable LEC attacks on bill-and-keep or other reasonable mutual compensation methods.

For example, the LECs already are claiming that the bill-and-keep model of interconnection would result in "cream-skimming."[122/] According to this argument, because end users such as business customers have a higher "willingness to pay" than other end users such as residential subscribers, incumbent LECs must recover the "sunk costs" of providing local loops by a "transfer of revenues" from the business customers with a higher willingness to pay to the residential subscribers with a lower willingness to pay.[123/] The LEC theory concludes that "bill-and-keep" would: (i) encourage new entrants to engage in "cream-skimming" by serving only customers with a higher willingness to pay; (ii) force incumbent LECs to "serv[e] a disproportionate number of customers with low willingness to pay"; and (iii) "prevent socially efficient and profitable opportunities."[124/]

122/ *See* R. Simnett, T.R. Spacek, and P. Srinagesh, *An Economic Analysis of the Claimed Applicability of the Bill and Keep Interconnection Arrangement to Local Telecommunications Competition*, (Bellcore, September 26, 1995) ("Bellcore Article").

123/ *See id.*, at 5-7.

124/ *See id.*, at 8-11. Incumbent LECs also claim that ordering bill-and-keep would be an unconstitutional taking. *See, e.g.*, *U S West Communications, Inc. v. Washington Util & Transportation Comm'n*, Petition for Review, filed on November 13, 1995, *appealing Washington UTC Order*. An unconstitutional taking argument, however, would not survive judicial scrutiny. Courts can be expected to consider three factors in assessing whether bill-and-keep interconnection constitutes a regulatory taking: (i) the economic impact of the regulation; (ii) interference with investment-backed expectations; and (iii) the character of the governmental action. *See, e.g.*, *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 98 S.Ct. 2646 (1978). First, to have a cognizable economic impact, a government's action must render property worthless, or virtually worthless. Yet, incumbent LECs still would be able to provide all of the services they currently provide under a bill-and-keep regime, and would receive the further economic benefit of being able to terminate their traffic on competing networks at no cost. Secondly, courts are clear that the mere loss of anticipated profits does not constitute interference with investment-backed expectations. The third element refers to whether there has been a physical taking — *i.e.*, a physical invasion of LEC property — which is not at issue here. As practical matter, moreover, studies using the LECs' own data show that the burden of measuring and charging for terminating traffic would be enormous in relation to the actual *de minimis* cost of terminating traffic. Thus, using bill-and-keep for traffic termination is fair to incumbent LECs and produces an economically efficient result.

In the *MCI Order*, AT&T argued that the Commission's authorization of MCI's private line services would result in similar "cream skimming." In rejecting AT&T's cream-skimming theory, the Commission held that MCI's private line service would offer the public "unique and specialized characteristics" and was not a "serious threat to established carriers[]."[125] On reconsideration, AT&T repeated its cream-skimming theory, envisioning that "a proliferation of specialized carriers like MCI will result in a diversion of business."[126] The Commission's response is worth repeating:

> In effect the carriers are arguing that a new service should not be authorized if it will result in a diversion of any business from existing carriers irrespective of the benefits to be derived by the public from a grant of the requested authority. The [public interest] requires no such guarantee against competition.[127]

Another LEC claim, that cream-skimming will harm universal service by allowing competitors to deprive LECs of a necessary revenue "contribution" source to subsidize basic residential service rates, is based on the false premise that residential service rates currently do not recover the cost of such service. In fact, there is ample evidence that residential services are priced at (or even above) their costs, and subsidies to residential ratepayers simply do not exist.[128] Indeed, in some states, residential ratepayers are even subsidizing non-residential and non-basic services.[129] It is striking to recall that the Commission rejected AT&T's contention in the *Customer Interconnection* proceeding that competitive interconnection of terminal equipment and private line services would result in a "contribution loss" of subsidies for basic telephone service, finding that "precisely the opposite may be true, *i.e.*, that terminal equipment and private line services may be earning less than their full costs, and thereby imposing a burden on basic telephone rates."[130]

125/ *See MCI Order*, 18 F.C.C.2d at 960.

126/ *See MCI Reconsideration Order*, 21 F.C.C.2d at 192-3.

127/ *See id.*, 21 F.C.C.2d at 194.

128/ *See* Teleport Communications Group, *Universal Service Assurance: a Concept for Fair Contribution and Equal Access Subsidies*, at 5-6 (December 1993) ("Teleport Universal Service Paper") (citing *Local Competition and Interconnection*, Staff Report, at 31 (Illinois Commerce Comm'n, July 2, 1992); *Generic Investigation Into IntraLATA Toll Competition Access Rates*, DE 90-002, at 6-7 (New Hampshire Pub. Util. Comm'n, June 10, 1993); Gabel, David, Testimony before the Maine Public Utilities Commission, on behalf of the Commission Advocacy Staff, Docket No. 92-130, at 3 (December 1992)).

129/ *See id.*

130/ *See Customer Interconnection*, 61 F.C.C.2d at 776.

Similarly, the Commission must reject LEC claims that competition in the local exchange, and a pro-competitive bill-and-keep interconnection model, will result in a loss of revenue contribution necessary to subsidize basic residential service rates where basic residential service rates already recover their costs and no subsidy to residential ratepayers exists. Furthermore, in those instances where basic residential service rates do not recover their costs, the existing subsidy mechanism which supports only the LEC must be replaced by a competitively neutral subsidy from which all competitors will be able to draw in serving "high-cost" customers.[131/]

The Commission's historic role in the introduction of long distance competition establishes the critical nature of adopting an interconnection policy that promotes local exchange competition. In the *Customer Interconnection* proceeding, the Commission initiated a broad inquiry into the effect of CPE and private line interconnection policies on competition and found that AT&T had engaged in discriminatory pricing of its equipment services by loading the costs of those services onto basic telephone ratepayers. The broad market findings made in the *Customer Interconnection* proceeding confirmed for the Commission that competitive interconnection and access to AT&T's essential facilities is in the public interest, and supported its decision in *Competitive Carrier* to apply strict dominant carrier regulation to AT&T and to forbear from applying burdensome regulation to competitive non-dominant long distance carriers. In addition, in the *Connecting Arrangements Order*, the Commission adopted a registration program to redress attempts by AT&T to reduce the marketability of competing equipment by imposing unjustifiably expensive "connecting arrangements" for the use of equipment not provided by AT&T. Continued Commission adoption of pro-competitive interconnection policies such as bill-and-keep compensation will likewise address LEC exercise of monopoly control over the local exchange bottleneck.

C. Number Portability Is a Vital Element in the Introduction of Local Competition

Both the Commission and state regulators have recognized that local service provider telephone number portability — the ability to change local telephone companies without changing telephone numbers — is yet another key element in the development of local

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131/ *See* Teleport Universal Service Paper, at 3-4 (Teleport has proposed a "Universal Service Assurance" fund to which all telecommunications service providers would contribute in proportion to their market share, and from which all facilities-based local exchange carriers would be able to obtain subsidies on the same terms and conditions). The Commission already has embarked upon a proceeding examining necessary reforms to its universal service programs brought about by the onset of competition. *See Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, Notice of Proposed Rulemaking and Notice of Inquiry, FCC 95-282, CC Docket No. 80-286 (released July 13, 1995).

competition. In much the same way that equal access made true long distance competition possible, service provider number portability will make it possible for local telephone competition to survive and thrive. The Commission should build on the work of state regulators to mandate implementation of both short-term and long-term number portability solutions.

Number portability is important because customers understandably are reluctant to change their telephone carriers if they have to change their telephone numbers at the same time. Numbers are very important to both business and residential customers, as demonstrated by market research data that shows that many customers will not change carriers or will require significant discounts to change carriers if they cannot keep their telephone numbers. This reluctance to change telephone numbers is based on the real costs associated with changing telephone numbers, such as new stationery and notification to people who call the customer.

For these reasons, several states already have begun to explore how to implement number portability.[132/] For instance, in March, 1995, the New York Public Service Commission mandated a study of the feasibility of a local number portability trial in New York.[133/] Since then, New York has reviewed several proposals and approved a trial of MCI's "Carrier Portability Code" approach for short-term portability. Washington State has completed its initial trial, during which routing and implementation issues that apply to most proposals for number portability were addressed. Other states have focused on long term solutions, including California, Georgia, Illinois and Maryland. Of those states, Georgia, Illinois and Maryland have determined that portability should follow the "Location Routing Number" model proposed by AT&T. California has mandated interim portability measures, such as remote call forwarding, and has ordered an industry task force to provide a report on permanent portability solutions in early 1996.[134/]

132/ *See Ex Parte* Letter from American Personal Communications, L.P., AT&T Corp., Comcast Corp., Cox Enterprises, Inc., Eastern Telelogic Corp., Hyperion Telecommunications, Inc., MCI Telecommunications Corp., McCleod Telemanagement, Inc., MFS Communications Company, Inc., Sprint Corp., TCI Communications, Inc, Teleport Communications Group, Inc., Time Warner Communications, Inc., and U. S. Network Corp., to Reed E. Hundt, Chairman, Federal Communications Commission, *filed in* CC Docket No. 93-237 (July 6, 1995).

133/ *See* New York State Number Portability Trial, Request for Proposal No. 9501 (March 1995).

134/ *See Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service*, Decision 95-07-054, R.95-04-043, I.95-04-044 (released July 24, 1995). The industry group has requested authority to submit its report by the end of February.

The Commission also has begun to assert its vital interest in ensuring that number portability becomes a reality. In its pending number portability rulemaking, the Commission has tentatively concluded that the portability of telephone numbers will benefit consumers of telecommunications services and contribute to the development of competition among alternative providers of telecommunications services.[135] The Commission also recently took important steps to introduce local competition by establishing the North American Numbering Council ("NANC") as a joint government-industry committee "to provide to the Commission advice and recommendations reached through consensus to foster efficient and impartial number administration as telecommunications competition emerges."[136] The proposed federal telecommunications legislation will confirm the Commission's central role in making number portability happen.[137]

In implementing the number portability regulations, the Commission's experience with long distance competition provides an historic parallel. Prior to the introduction of equal access requirements, a customer could not place a toll call with competing long distance carriers such as MCI and Sprint without significant inconvenience. While customers using AT&T were only required to dial a total of ten or eleven digits, customers of other IXCs were required to dial as many as twenty-two digits.[138] To remedy this obvious anticompetitive defect, BOCs were required to provide competing IXCs with the same dialing access provided to AT&T, and LECs were required to provide direct customer access,[139] "1 + dialing," or access without use of an access code.[140]

It is no accident that, since the implementation of these equal access rules, AT&T's market share has steadily declined. A Commission study reveals that:

> During 1984, AT&T's toll revenues of $35 billion accounted for 90% of the revenues received by all long distance carriers. By 1994, with its revenues slightly higher, [AT&T's] share of the

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135/ *See Telephone Number Portability*, Notice of Proposed Rulemaking, CC Docket No. 95-116, RM 8535, FCC 95-284, at ¶ 6 (released July 13, 1995).

136/ *See Administration of the North American Numbering Plan*, Report and Order, CC Docket No. 92-237, FCC 95-283, at ¶ 46 (released July 13, 1995).

137/ *See* Proposed 47 U.S.C. § 251(e), Telecommunications Act of 1995, § 101.

138/ *See United States v. AT&T*, 552 F.Supp. 131, 197-8 (D.D.C. 1982), *aff'd sub nom. Maryland v. U.S.*, 460 U.S. 1001 (1983).

139/ *See id.*

140/ *See MTS and WATS Market Structure*, Phase III, CC Docket No. 78-72, 100 F.C.C.2d 860, 876 (1985).

> revenues had fallen to about 55%. MCI's revenues grew from almost $2 billion in 1984 to approximately $12 billion in 1994 with a market share of 17%. Likewise, Sprint's revenues grew from about $1 billion in 1984 to almost $7 billion in 1994, with a market share of 10%. Smaller carriers tripled their share of the market, increasing from 3% in 1984 to 17% in 1994.[141/]

This reduction in AT&T's market share caused the Commission recently to declare AT&T to be non-dominant in long distance services — a testament, in part, to the success of the equal access policies. [142/]

Just as the Commission's equal access policies helped to introduce long distance competition, service number portability rules will facilitate local exchange competition by allowing customers to choose among competing services without having to change telephone numbers. The Commission and several states already have taken important first steps to ensure the prompt implementation of true number portability. Legislative reform in conjunction with additional state numbering initiatives will only enhance the Commission's ability to establish pro-competitive number policies that will help open up the local loop.

III. CONCLUSION

The central purpose of this paper is to show that the Commission holds the key to opening up the local loop to competition. Because the local exchange remains subject to abuse by incumbent LECs with market power, an effective transition to competition will require bold, decisive and speedy action by the Commission. This paper demonstrates that today's Commission must chart a pro-competitive course for the local exchange by drawing on its historic policies that broke up AT&T's monopoly over long distance telecommunications.

The hard-fought battles over nondiscriminatory access and interconnection to AT&T's monopoly networks and essential facilities provide textbook examples for the Commission in plotting pro-competitive interconnection policies for the local exchange market. Although AT&T attempted to stave off competing providers of telecommunications equipment, private branch exchanges, and telephone key systems by introducing discriminatory interconnection provisions and engaging in anticompetitive cost-shifting, the Commission made sure in decisions such as *Carterfone*, *Connecting Arrangements* and *AT&T Premises Ruling* that AT&T opened up its essential network facilities to fledgling competitors and their customers at just and reasonable rates and on nondiscriminatory terms and conditions. Similarly, the

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141/ *See Long Distance Market Shares: Third Quarter 1995*, at 4 (Industry Analysis Div., released January 19, 1996).

142/ *See Motion of AT&T Corp to be Reclassified as a Non-Dominant Carrier*, Order, FCC 95-427 (released October 23, 1995).

Commission will be able to prevent incumbent LECs from denying competitor requests for access and interconnection to incumbent LEC networks by adhering to a pro-competitive bill-and-keep policy. The Commission's recently initiated rulemaking proposing to establish bill-and-keep as an interim approach for LEC-to-CMRS interconnection is a critical step in the right direction.

The Commission should model its policies for encouraging new entry and facilities-based competition in the local exchange market on its epic role in fostering new entry into the long distance market over AT&T's strenuous opposition. The Commission's *Above 890* and *Specialized Common Carrier* decisions spurred long distance competition by enabling private microwave competitors to introduce new and advanced transmission technologies. The Commission also groomed the long distance market for new private line entrants in its *Competitive Carrier* proceeding by imposing tough standards on AT&T as a dominant carrier and forbearing from applying burdensome or unnecessary regulations to non-dominant competitors. These decisions have led to robust competition in today's long distance market with companies such as MCI and Sprint vying for market share and customers with AT&T. Likewise, the Commission can promote new entry into the local exchange market by eliminating state and federal regulatory barriers and declaring non-dominant competitors to be forborne from burdensome regulation.

Just as the Commission's equal access policies facilitated long distance competition by allowing competitors to gain access to the local loop on the same terms as AT&T, service provider number portability will make it possible for local telephone competition to flourish. Both the Commission and state regulators have recognized that local service provider telephone number portability — the ability to change local telephone companies without changing telephone numbers — is another important element in the development of local competition. The Commission should mandate implementation of both short-term and long-term number portability solutions.

It is now almost ten years since Peter Huber first predicted that all hierarchies in the local exchange would be replaced by decentralized "nodes" of interconnected intelligence, but the "geodesic network" has failed to become a reality.[143/] As late as last year, incumbent LECs still controlled well over 90 percent of the local exchange market.[144/] Perhaps visionaries such as Huber are looking the wrong way. After all, the American architect and designer R. Buckminster Fuller believed that geodesic domes would be the most perfect and efficient abode for the future of humankind, but, today, who lives in them? Cox Enterprises

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143/ *See* Peter W. Huber, THE GEODESIC NETWORK: 1987 REPORT ON COMPETITION IN THE TELECOMMUNICATIONS INDUSTRY (U.S. Dep't of Justice, 1987); Peter W. Huber, Michael K. Kellogg, John Thorne, THE GEODESIC NETWORK II: 1993 REPORT ON COMPETITION IN THE TELEPHONE INDUSTRY, 1.16 (1993).

144/ *See Common Carrier Competition*, at 5 (Com. Car. Bur., released Spring 1995).

submits that the key to the future of competition in the local exchange market lies not in the complexities of marketplace theories or high-tech visions of the future, but in the Commission's ability to build on its historic and pro-competitive telecommunications policies of the past.